

**U.S. Bankruptcy Court
California Northern Bankruptcy Court (San Francisco)
Bankruptcy Petition #: 19-30088**

Assigned to: Judge Dennis Montali
Chapter 11
Voluntary
Asset

Date filed: 01/29/2019
Plan confirmed: 06/20/2020
341 meeting: 04/29/2019
Deadline for filing claims: 10/21/2019
Deadline for filing claims (govt.): 10/21/2019

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TERMINATED: 11/12/2019

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| Filing Date | # | Docket Text |
|-------------|--------------|--|
| 03/08/2022 | <u>11999</u> | Memorandum Decision Regarding Dispute Between Debtors and the California Department of Water Resources (RE: related document(s) <u>11887</u> Motion to Reject Lease or Executory Contract filed by Interested Party California Department of Water Resources, <u>11896</u> Motion Miscellaneous Relief filed by Debtor PG&E Corporation). (lp) (Entered: 03/08/2022) |
| 03/08/2022 | <u>12000</u> | Order Granting California Department of Water Resources' Motion For Order Determining That The Castle Rock Agreement With PG&E Cannot Be Assumed And Claim No. 78104 Be Paid (Related Doc # <u>11887</u>) (lp) (Entered: 03/08/2022) |
| 03/08/2022 | <u>12001</u> | Order Denying Debtors' Motion For Entry Of An Order Modifying Plan Injunction And Compelling Arbitration Of Claim Of California Department Of Water Resources (Related Doc # <u>11896</u>) (lp) (Entered: 03/08/2022) |
| 03/21/2022 | <u>12054</u> | Order Denying Motion to Intervene by City of Santa Clara, DBA Silicon Valley Power and Northern California Power Agency (Related Doc # <u>12024</u>) (lp) (Entered: 03/22/2022) |
| 04/22/2022 | <u>12207</u> | Order Regarding Dispute Between Debtors and California Department of Water Resources (RE: related document(s) <u>11887</u> Motion to Reject Lease or Executory Contract filed by Interested Party California Department of Water Resources). (lp) (Entered: 04/22/2022) |
| 05/05/2022 | <u>12310</u> | Notice of Appeal and Statement of Election <i>to Have Appeal Heard by United States District Court for the Northern District of California</i> , Fee Amount \$ 298. (RE: related document(s) <u>11999</u> Memorandum Decision, <u>12000</u> Order on Motion to Reject Lease or Executory Contract, <u>12001</u> Order on Motion for Miscellaneous Relief, <u>12054</u> Order on Motion for Miscellaneous Relief, <u>12207</u> Order). Appellant Designation due by 05/23/2022. Transmission of Record to District Court due by 06/6/2022. Statement of Issues due by 05/23/2022. (Attachments: # <u>1</u> Certificate of Service) Filed by Creditors City of Santa Clara dba Silicon Valley Power, Northern California Power Agency (Mouzes, Thomas) (Entered: 05/05/2022) |
| 05/06/2022 | <u>12322</u> | Courts Certificate of Mailing. Number of notices mailed: 18 (RE: related document(s) <u>12310</u> Notice of Appeal and Statement of Election). (dc) (Entered: 05/06/2022) |
| 05/12/2022 | <u>12366</u> | Certificate of Service <i>of Sonia Akter Regarding Notice of Appeal and Statement of Election to Have Appeal Heard by United States District Court for the Northern District of California</i> Filed by Other Prof. Kroll Restructuring Administration LLC (related document(s) <u>12310</u> Notice of Appeal and Statement of Election). (Malo, David) (Entered: 05/12/2022) |



Signed and Filed: March 8, 2022

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
) Chapter 11
- and -) Jointly Administered
PACIFIC GAS AND ELECTRIC COMPANY,)
Reorganized Debtors.)
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

**MEMORANDUM DECISION REGARDING DISPUTE BETWEEN DEBTORS AND THE
CALIFORNIA DEPARTMENT OF WATER RESOURCES**

On March 2, 2022, the court heard oral argument regarding
California Department of Water Resources' Motion for Order
Determining that The Castle Rock Agreement with PG&E Cannot be
Assumed and that The Department of Water Resources' Claim No.
78104 be Paid (the "DWR Motion") (Dkt. 11887) and the Motion of

1 the Reorganized Debtors for Entry of an Order Modifying Plan
2 Injunction and Compelling Arbitration of Claim of California
3 Department of Water Resources (the "Debtors' Motion") (Dkt.
4 11896), together with the accompanying memoranda, declarations
5 and other filings.

6 Having considered the matters fully, the court concludes
7 that the DWR Motion should be GRANTED and the Debtors' Motion
8 should be DENIED.

9 Long before these bankruptcy cases were filed, the dispute
10 between these opposing parties was identified and framed, and
11 either side could have initiated the arbitration procedures of
12 the 1984 Cotenancy Agreement ("Agreement"). Neither did. Even
13 after the petitions were filed on January 29, 2019, that
14 procedure was available, either by DWR, perhaps after first
15 seeking relief from stay, or by Debtors. Again, neither pursued
16 that procedure.

17 All that changed when the Debtors' Plan of Reorganization
18 (the "Plan") was negotiated, filed, considered and confirmed.
19 As pointed out by DWR, specific provisions were inserted into
20 the Plan and the Order Confirming the Plan (the "OCP") to deal
21 with and reserve for later resolution very numerous open issues
22 relating to executory contracts between Debtors and many
23 governmental agencies, including DWR.

24 Among the most relevant of them are:

25 34. Determination of Cure Disputes.

26 a. Pursuant to Section 8.2(c) of the Plan, **in the event**
27 **of an unresolved dispute regarding** (i) any Cure Amount,
28 (ii) the ability of the Reorganized Debtors or any
assignee to provide "adequate assurance of future
performance" (within the meaning of section 365 of the

1 Bankruptcy Code) under the executory contract or
2 unexpired lease to be assumed, or **(iii) any other matter**
3 **pertaining to assumption, assumption and assignment, or**
4 **the Cure Amounts required by section 365(b)(1) of the**
5 **Bankruptcy Code (each, a "Cure Dispute"), such Cure**
6 **Dispute shall be resolved by a Final Order of the Court,**
7 which may be entered after the Effective Date. (emphasis
8 added).

67. Governmental Performance Obligations.

6 d. Notwithstanding anything in this Confirmation Order,
7 the Plan, or the Plan Documents, the listing of a matter
8 as an "executory contract" or an "unexpired lease" in
9 the Debtors' schedules or Plan Documents (a "Potentially
10 Assumed Contract/Lease") is without prejudice to any
11 contention by any Governmental Unit that the matter is
12 not in fact an executory contract or unexpired lease as
13 set forth in section 365 of the Bankruptcy Code. With
14 respect to any Cure Amount for a Potentially Assumed
15 Contract/Lease for which the United States or any
16 department, agency, or instrumentality of the State of
17 California (collectively, the "Governmental Parties") is
18 listed as the Non-Debtor Counterparty, all parties
19 reserve all rights to dispute such Cure Amount. **If any**
20 **Governmental Party disputes (i) that any Potentially**
21 **Assumed Contract/Lease is in fact an executory contract**
22 **or unexpired lease** or (ii) any Cure Amount, such
23 Governmental Party shall have no later than ninety (90)
24 days after the Confirmation Date (or such later date as
25 may be mutually agreed upon between the applicable
26 Governmental Party and the Debtors or Reorganized
27 Debtors) to file and serve an objection setting forth
28 such dispute, and **any such dispute shall be resolved by**
the Bankruptcy Court. (Emphasis added).

21 DWR is adamant that after it gave its notice of termination
22 of its participation in the Agreement on June 30, 2018,
23 effective one year later, there was nothing left for it to do or
24 for Debtors to assume. All that remains is for Debtors to pay a
25 refund of \$101,026.75, now reflected in Proof of Claim No. 78104
26 that is presumptively allowed and has not been the subject of an
27 objection.

1 Debtors take a contrary view, reflected as early as when
2 the court was considering confirmation of the Plan. Debtors
3 filed their *Schedule of Executory Contracts and Unexpired Leases*
4 *to be Assumed Pursuant to the Plan and Proposed Cure Amounts*
5 attached to the Plan Supplement as Exhibit B ("Cure Notice")
6 (Dkt. 7037).

7 That lengthy schedule included the Agreement. Thus, even
8 to the present date, Debtors maintain that the Agreement was
9 subject to assumption because it was not rejected, and the
10 resolution of the remaining dispute that is the subject of the
11 present motions is part and parcel of the entire bundle of
12 rights and obligations of the parties that must be resolved
13 through arbitration.

14 Given the very specific attention given to matters that
15 plainly include the present dispute, the court is satisfied that
16 the Plan and the OCP reserving jurisdiction in this court to
17 resolve them prevail over those relied on by Debtors to require
18 the court to order arbitration.

19 In *In re Thorpe Insulation Co.*, 671 F.3d 1011 (9th Cir.
20 2012), the court established the principles that guide
21 bankruptcy courts in dealing with arbitration provisions versus
22 bankruptcy alternatives. Those principles convince this court
23 to exercise its discretion not to order arbitration at present.

24 *Thorpe* involved a very complex reorganization of an
25 asbestos mass torts case and the implementation of 11 U.S.C. §
26 524(g). It was a dispute of massive proportions and was
27 obviously quite critical to the outcome of the bankruptcy as a
28 whole.

1 In contrast, Debtors would not have been in bankruptcy at
2 all but for the tragic wildfires of 2015, 2017 and 2018, none of
3 which have anything to do with the present dispute. It is easy
4 to assume that had those fires not occurred, no bankruptcy court
5 would have been called upon to deal with the present dispute
6 with DWR.

7 The determination of whether the Agreement is an executory
8 contract that may be assumed, and if so under what circumstances
9 and leading to what consequences, is clearly a core matter for
10 determination unless the arbitration option is more appropriate.
11 The core question is not a dispositive factor, but one that
12 should be considered. *Thorpe* taught that “[i]n core proceedings,
13 by contrast, the bankruptcy court at least when it sees a
14 conflict with bankruptcy law, has discretion to deny enforcement
15 of an arbitration agreement.” *Thorpe* 671 F.3d at 1021 (citations
16 omitted).

17 The Ninth Circuit agreed with other circuit courts that
18 permit bankruptcy court discretion to decline enforcement or
19 otherwise applicable arbitration provisions “only if arbitration
20 would conflict the underlying purposes of the Bankruptcy Code.”
21 *Id.* (citations omitted). Had either party initiated arbitration
22 after DWR gave its notice of termination in 2018 but before the
23 bankruptcy, there is no doubt that such course would have to be
24 followed. Even if either party had sought to do so after
25 bankruptcy, but before consideration of the Plan, the same
26 result appears likely.

27 Regardless of what could have happened, Debtors chose to
28 reserve the disposition of this dispute as a post-Confirmation

1 matter as indicated above. While this court is not unmindful of
2 the tremendous complexity of the reorganization effort, and even
3 the complexities encountered apart from the wildfire problems,
4 Debtors still made an election of how best to proceed. They
5 could have excluded the Agreement from the list of matters to be
6 disposed of later but did not. Thus, the deferral of resolving
7 the issue through the plan mechanisms was a conscious choice.

8 *Thorpe* stated:

9 "Arbitration of a creditor's claim against a debtor, even
10 if conducted expeditiously, prevents the coordinated
11 resolution of debtor-creditor rights and can delay the
confirmation of a plan of reorganization."

12 *Id.* at 1023.

13 There was no delay in consideration of the Plan and its
14 subsequent confirmation and implementation. The court cannot
15 ignore that conscious choice of the Debtors to proceed under the
16 procedures and reservations they established and which DWR and
17 other governmental agencies responded by their reservation of
18 rights as noted.

19 Even though this issue is presented to the court nearly two
20 years after the Plan was confirmed, there is still a risk that
21 an outcome achieved via arbitration, at least on the issues of
22 whether the Agreement was to the reserved assumption provisions
23 of the Plan at all, and whether DWR could be required to pay
24 anything after it gave its notice of termination, would conflict
25 with those policies articulated by *Thorpe* and memorialized in
26 the Plan and the OCP.

27 Under the circumstances presented, and consistent with the
28 admonitions of *Thorpe*, the court prefers to exercise its

1 discretion and keep that dispute here. If the outcome is as DWR
2 hopes, the matter is over, subject only to the possibility of
3 appellate review. If the outcome favors Debtors, the question
4 of liquidation of the amount of damages to be paid by DWR may be
5 more appropriately determined through arbitration.

6 There are no material facts in dispute regarding whether
7 DWR should or should not be ordered to pay its share of the net
8 loss upon termination of the Agreement. DWR looks to Section
9 14.5 of the Agreement to insulate it from such a charge because
10 the other parties continued to operate under it. Debtors rely
11 on Section 14.7 to hold DWR responsible for its share for
12 termination in the future.

13 Collateral to that, and of relatively minor importance, is
14 whether Claim No. 78104 should be paid. So far Debtors have not
15 asserted any substantive objection to it, but maintain that if
16 they prevail on the termination issue that would represent
17 little more than a minor offset in DWR's favor.

18 It is now time to put this dispute to rest. Debtors have
19 until March 25, 2022, to file a memorandum, not to exceed twenty
20 pages and limited to this discrete issue described above, in
21 support of their position. DWR has until April 8, 2022, to file
22 a reply memorandum, not to exceed twenty pages and similarly
23 limited. After that the matter will stand submitted unless the
24 court decides to consider oral argument.

25 If the decision is that DWR prevails, then that should be
26 the end of it, subject only to Debtors paying Claim No. 78104.
27 If Debtors prevail on that discrete issue, the court will
28 revisit the question of the amount DWR's future liability upon

1 termination should be determined through arbitration or via a
2 damages trial in this court.

3 The court is concurrently issuing orders consistent with
4 this Memorandum Decision.

5 ****END OF MEMORANDUM DECISION****
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Signed and Filed: March 8, 2022

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
) Chapter 11
- and -) Jointly Administered
PACIFIC GAS AND ELECTRIC COMPANY,)
Reorganized Debtors.)
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

**ORDER GRANTING CALIFORNIA DEPARTMENT OF WATER RESOURCES' MOTION
FOR ORDER DETERMINING THAT THE CASTLE ROCK AGREEMENT WITH PG&E
CANNOT BE ASSUMED AND CLAIM NO. 78104 BE PAID**

For the reasons stated in the Memorandum Decision Regarding
Dispute Between Debtors and The California Department of Water
Resources being issued concurrently, California Department of
Water Resources' Motion for Order Determining that The Castle

1 *Rock Agreement with PG&E Cannot be Assumed and that The*
2 *Department of Water Resources' Claim No. 78104 be Paid (Dkt.*
3 *11887) is GRANTED.*

4 ****END OF ORDER****



Signed and Filed: March 8, 2022

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
) Chapter 11
- and -) Jointly Administered
PACIFIC GAS AND ELECTRIC COMPANY,)
Reorganized Debtors.)
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

**ORDER DENYING DEBTORS' MOTION FOR ENTRY OF AN ORDER MODIFYING
PLAN INJUNCTION AND COMPELLING ARBITRATION OF CLAIM OF
CALIFORNIA DEPARTMENT OF WATER RESOURCES**

For the reasons stated in the Memorandum Decision Regarding
Dispute Between Debtors and The California Department of Water
Resources being issued concurrently, the Motion of the
Reorganized Debtors for Entry of an Order Modifying Plan

*Injunction and Compelling Arbitration of Claim of California
Department of Water Resources (Dkt. 11896) is DENIED.*

****END OF ORDER****



Signed and Filed: March 21, 2022

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
) Chapter 11
- and -) Jointly Administered
PACIFIC GAS AND ELECTRIC COMPANY,)
Reorganized Debtors.)
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

ORDER DENYING MOTION TO INTERVENE BY CITY OF SANTA CLARA, DBA
SILICON VALLEY POWER AND NORTHERN CALIFORNIA POWER AGENCY

On March 15, 2022, interested parties City of Santa Clara, dba Silicon Valley Power ("SVP") and Northern California Power Agency ("NCPA") filed a *Notice of Appearance and Ex Parte Application for Order Authorizing City of Santa Clara, dba Silicon Valley Power and Northern California Power Agency to Intervene and File a Response to California Department of Water*

1 *Resources' Motion for Order Determining that the Castle Rock*
2 *Agreement Cannot Be Assumed and that the Department of Water*
3 *Resources Claim No. 78014 be Paid (the "Intervention Motion")*
4 *(Dkt. 12024)*. On March 17, 2022 the California Department of
5 Water Resources' ("DWR") filed an Opposition to the Intervention
6 Motion *(Dkt. 12035)*.

7 The Intervention Motion seeks to enter the fray of a
8 longstanding and nearly adjudicated dispute by filing a brief
9 according to the schedule set by the court's *Memorandum Decision*
10 *Regarding Dispute Between Debtors and the California Department*
11 *of Water Resources (Dkt. 11999)* (the "Memo"). The Memo detailed
12 the court's decision to grant DWR's *Motion for Order Determining*
13 *that the Castle Rock Agreement with PG&E Cannot be Assumed and*
14 *Claim No. 78104 be Paid ("DWR Motion") (Dkt. 11887)* and
15 subsequently set a further briefing schedule for DWR and
16 Debtors. SVP and NCPA were both served notice of the DWR Motion
17 when it was first filed on February 1, 2022. The Intervention
18 Motion makes clear that SVP and NCPA conferred with Debtors and
19 deliberately chose not to respond to the substance of the DWR
20 Motion in the belief that Debtors would prevail in their *Motion*
21 *of the Reorganized Debtors for Entry of an Order Modifying Plan*
22 *Injunction and Compelling Arbitration of Claim of California*
23 *Department of Water Resources (Dkt. 11896)*, which the court
24 denied.

25 In the related dispute between Debtors and DWR, DWR
26 acknowledged the existence of an agreement among it, SVP and
27 NCPA (but not Debtors) known as the Layoff Agreement.
28 Responding to the *Reorganized Debtors' Motion for Order*

1 *Modifying Plan Injunction and Compelling Arbitration* (Dkt.
2 11896), DWR stated:

3
4 Whether DWR effectively terminated its interest in
5 the Castle Rock Agreement is a separate issue that
6 can be determined without reference to the Layoff
7 Agreement. To the extent that NCPA and SVP believe
8 they may have any cognizable action against DWR,
9 they should pursue it in state court rather than
10 attempt to manipulate the bankruptcy court
11 proceeding to seek relief through the Executory
12 Contract and Cure Dispute and claims allowance
13 process. (Dkt. 11942 at 14).

14 In determining whether a motion to intervene is timely,
15 courts consider three factors: "(1) the stage of the
16 proceedings; (2) whether the parties would be prejudiced; and
17 (3) the reason for any delay in moving to intervene." *Nw. Forest*
18 *Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996), as
19 amended on denial of reh'g (May 30, 1996). As noted above, SVP
20 and NCPA chose not to participate in the DWR Motion for the past
21 month and a half while DWR made clear its interest in
22 determining the merits of the DWR Motion as to the Debtors from
23 the beginning. They remained on the sideline, casting their
24 fate with the Reorganized Debtors. To allow them to have a
25 second chance now would not be fair to DWR.

26 The proceedings are nearly over, DWR would be prejudiced in
27 having previously defaulted parties enter the fray, and the
28 reason for the delay is entirely the choice of SVP and NCPA.
All three factors weigh in favor of denying the Intervention
Motion. Even without intervention, DWR, SVP, and NCPA will

1 still be able to determine remaining rights under the Layoff
2 Agreement in another forum.

3 Accordingly, the Intervention Motion is DENIED.

4 **END OF ORDER**
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COURT SERVICE LIST

ECF Recipients

April 22, 2022

EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Signed and Filed: April 22, 2022

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DENNIS MONTALI
U.S. Bankruptcy Judge

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Attorneys for California Department of Water
Resources, by and through the State Water Project

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

- and -

PACIFIC GAS AND ELECTRIC
COMPANY,

Reorganized Debtors.

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**ORDER REGARDING DISPUTE
BETWEEN DEBTORS AND CALIFORNIA
DEPARTMENT OF WATER RESOURCES**

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and
Electric Company
☒ Affects both Debtors

Date: April 13, 2022
Time: 10:00 a.m.
Crm: 17
Judge: Dennis Montali

1 Before the Court is the California Department of Water Resources' Motion for Order
2 Determining that The Castle Rock Agreement with PG&E Cannot be Assumed and that The
3 Department of Water Resources' Claim No. 78104 be Paid (the "DWR Motion")¹ (Dkt. No. 11887)
4 and the Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and
5 Compelling Arbitration of Claim of California Department of Water Resources (the "Debtors'
6 Motion") (Dkt. No. 11896) in the above captioned chapter 11 cases; and this Court having issued
7 its Memorandum Decision Regarding Dispute Between Debtors and the California Department of
8 Water Resources (Dkt. No. 11999) granting the DWR Motion and denying the Debtors' Motion by
9 orders at Docket Nos. 12000 and 12001, respectively, and setting a further briefing schedule; and
10 the Court having considered and denied the Notice of Appearance and Ex Parte Application for
11 Order Authorizing City of Santa Clara, dba Silicon Valley Power and Northern California Power
12 Agency to Intervene and File a Response to California Department of Water Resources' Motion
13 for Order Determining that The Castle Rock Agreement with PG&E Cannot be Assumed and that
14 The Department of Water Resources' Claim No. 78104 be Paid (Dkt. 12024 and 12054); and the
15 Court having considered the further briefing by the Debtors (Dkt. No. 12076) and DWR (Dkt. Nos.
16 12129 and 12129-1); and the Court having issued its Tentative Ruling Re Dispute Between Debtors
17 and the California Department of Water Resources ("Tentative Ruling") (Dkt. No. 12147); and the
18 Court having held hearings on March 2, 2022, and April 13, 2022, to consider the arguments and
19 objections of the parties; and this Court, for the reasons stated by this Court on the record at the
20 hearings, having determined that the ruling in the Court's Tentative Ruling should become the final
21 ruling, and after due deliberation and sufficient good cause appearing therefor,

22 IT IS HEREBY ORDERED THAT:

23 1. The issue of DWR's liability for removal costs under the Castle Rock Agreement
24 was properly before the Court based on the DWR Motion, the Debtors' Motion and the other
25 pleadings and argument made to the Court in these proceedings;

26 2. There are no material facts in dispute;

27
28 ¹ Capitalized terms used but not otherwise herein defined shall have the meanings ascribed to such
terms in the DWR Motion.

1 3. DWR's interpretation of the applicable sections of the Castle Rock Agreement is
2 correct;

3 4. DWR does not owe any estimated future removal costs or anything else to Debtors
4 and the remaining cotenants (City of Santa Clara dba Silicon Valley Power and Northern California
5 Power Agency) under the Castle Rock Agreement; and

6 5. There are no damages to be assessed, by this Court or by arbitration, under that
7 agreement.

8 IT IS HEREBY FURTHER ORDERED that, except as to the rulings made herein, the Court
9 is not making any ruling as to any dispute between DWR on the one hand, and the City of Santa
10 Clara dba Silicon Valley Power and Northern California Power Agency on the other, under the
11 Transmission Services Agreement between those parties, which issues shall be dealt with outside
12 this Court.

13 IT IS HEREBY FURTHER ORDERED that the Court retains jurisdiction to hear and
14 determine all matters arising from or related to the implementation, interpretation, or enforcement
15 of this Order. This Order shall be immediately effective and enforceable upon its entry.

16 **APPROVED AS TO FORM**

17 KELLER BENVENUTTI KIM LLP

18 
19 Jane Kim, Attorneys for Debtors
and Reorganized Debtors

20 **END OF ORDER**

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 2 ROBERT D. SWANSON (SBN 162816)
 3 MICHAEL E. CHASE (SBN 214506)
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 NORTHERN CALIFORNIA POWER AGENCY

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

| | | |
|--------------------------|---|-----------------------------------|
| In re |) | Case Nos. 19-30088 DM (Lead Case) |
| |) | 19-30089 DM |
| PG&E CORPORATION |) | |
| -and- |) | Chapter 11 |
| PACIFIC GAS AND ELECTRIC |) | Jointly Administered |
| COMPANY, |) | |

Debtors.

☐ Affects PG&E Corporation

☐ Affects Pacific Gas and Electric Company

☒ Affects both Debtors.

* All papers shall be filed in the Lead Case
No. 19-30088 DM

**NOTICE OF APPEAL AND STATEMENT
OF ELECTION TO HAVE APPEAL HEARD
BY UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

**[Related to Dkt. Nos. 11999, 12000, 12001,
12054, 12207]**

NOTICE IS HEREBY GIVEN that City Of Santa Clara, dba Silicon Valley Power, and Northern California Power Agency hereby both appeal, pursuant to 28 U.S.C. § 158(a)(1), from the *Order Regarding Dispute Between Debtors and California Department of Water Resources* [Dkt. No. 12207], entered on April 22, 2022, a copy of which is attached hereto as **Exhibit A** (the “**Final Order**”), and each of the following interlocutory orders and decisions (collectively with the Final Order, the “**Orders**”):

- *Memorandum Decision Regarding Dispute Between Debtors and the California Department of Water Resources* [Dkt. No. 11999], entered on March 8, 2022, a copy of which is attached hereto as **Exhibit B**;
- *Order Granting California Department Of Water Resources’ Motion For Order Determining That The Castle Rock Agreement With PG&E Cannot Be Assumed And Claim No. 78104 Be Paid* [Dkt. No. 12000], entered on March 8, 2022, a copy of which is attached hereto as **Exhibit C**;

- *Order Denying Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources* [Dkt. No. 12001], entered on March 8, 2022, a copy of which is attached hereto as **Exhibit D**; and
- *Order Denying Motion to Intervene by City of Santa Clara, dba Silicon Valley Power and Northern California Power Agency* [Dkt. No. 12054], entered on March 22, 2022, a copy of which is attached hereto as **Exhibit E**.

City Of Santa Clara, dba Silicon Valley Power, and Northern California Power Agency are creditors and parties in interest. 11 U.S.C. §§ 101(10), 1009.

Pursuant to 28 U.S.C. § 158(c)(1), City Of Santa Clara, dba Silicon Valley Power, and Northern California Power Agency elect to have the appeal heard by the United States District Court for the Northern District of California rather than by the Bankruptcy Appellate Panel for the Ninth Circuit.

The names of the parties to the Orders and Memorandum Decision and the name, address, and telephone number of their respective attorneys, are:

APPELLANT

| Party | Counsel |
|--|--|
| Appellants City of Santa Clara, dba Silicon Valley Power, and Northern California Power Agency | Thomas G. Mouzes (SBN 99446) Robert D. Swanson (SBN 162816) Michael E. Chase (SBN 214506) BOUTIN JONES INC. 555 Capitol Mall, Suite 1500 Sacramento, CA 95814 Telephone: (916) 321-4444 Email: tmouzes@boutinjones.com rswanson@boutinjones.com mchase@boutinjones.com Lisa S. Gast DUNCAN, WEINBERG, GENZER & PEMBROKE, P.C. 1667 K Street NW, Suite 700 Washington, DC 20006 Telephone: (202) 791-3601 Email: lsg@dwgp.com JANE LUCKHARDT (SBN 141919) General Counsel NORTHERN CALIFORNIA POWER AGENCY |

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APPELLEE

| Party | Counsel |
|---|---|
| Appellee California Department of Water Resources | ROBERT BONTA Attorney General of California DANETTE VALDEZ, SBN 141780 ANNADEL ALMENDRAS, SBN 192064 Supervising Deputy Attorneys General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 510-3367 Fax: (415) 703-5480 Email: Danette.Valdez@doj.ca.gov Annadel.Almendras@doj.ca.gov PAUL J. PASCUZZI, SBN 148810 NICHOLAS L. KOHLMAYER, SBN 299087 FELDERSTEIN FITZGERALD WILLOUGHBY PASCUZZI & RIOS LLP 500 Capitol Mall, Suite 2250 Sacramento, CA 95814 Telephone: (916) 329-7400 Fax: (916) 329-7435 Email: ppascuzzi@ffwplaw.com nkohlmeier@ffwplaw.com |

OTHER PARTIES TO THE ORDERS AND MEMORANDUM DECISION

| Party | Counsel |
|---|---|
| Other Interested Parties PG&E Corporation ("PG&E Corp.") and Pacific Gas and Electric Company (the "Utility"), as debtors and reorganized debtors (collectively, the "Debtors," or as reorganized pursuant to the <i>Debtors' and Shareholder Proponents' Joint Chapter 11 Plan</i> | Richard W. Slack (<i>pro hac vice</i>) Theodore E. Tsekerides (<i>pro hac vice</i>) Jessica Liou (<i>pro hac vice</i>) Matthew Goren (<i>pro hac vice</i>) WEIL, GOTSHAL & MANGES LLP 767 Fifth Avenue New York, NY 10153-0119 Telephone: (212) 310-8000 Fax: (212) 310-8007 Email: Richard.slack@weil.com Theodore.tsekerides@weil.com |

1 *of Reorganization Dated*
 2 *June 19, 2020, the "Reorganized*
 3 *Debtors")*

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10 DATED: May 5, 2022.

BOUTIN JONES INC.

11
 12 By: /s/ Thomas G. Mouzes
 13 Thomas G. Mouzes
 Robert D. Swanson
 Michael E. Chase

14 -and-

15 Lisa S. Gast
 16 DUNCAN, WEINBERG, GENZER & PEMBROKE,
 17 P.C.

18 *Attorney for Creditor and Party-in-Interest,*
 19 *CITY OF SANTA CLARA, dba SILICON VALLEY*
POWER

20 -and-

21 Jane Luckhardt
 22 General Counsel
 23 NORTHERN CALIFORNIA POWER AGENCY

24 *Attorney for Creditor and Party-in-Interest*
 25 *NORTHERN CALIFORNIA POWER AGENCY*

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EXHIBIT A
(Final Order)

April 22, 2022

EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Signed and Filed: April 22, 2022

DENNIS MONTALI
U.S. Bankruptcy Judge

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Attorneys for California Department of Water
Resources, by and through the State Water Project

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

- and -

PACIFIC GAS AND ELECTRIC
COMPANY,

Reorganized Debtors.

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**ORDER REGARDING DISPUTE
BETWEEN DEBTORS AND CALIFORNIA
DEPARTMENT OF WATER RESOURCES**

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and
Electric Company
☒ Affects both Debtors

Date: April 13, 2022
Time: 10:00 a.m.
Ctm: 17
Judge: Dennis Montali

Before the Court is the California Department of Water Resources' Motion for Order Determining that The Castle Rock Agreement with PG&E Cannot be Assumed and that The Department of Water Resources' Claim No. 78104 be Paid (the "DWR Motion")¹ (Dkt. No. 11887) and the Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources (the "Debtors' Motion") (Dkt. No. 11896) in the above captioned chapter 11 cases; and this Court having issued its Memorandum Decision Regarding Dispute Between Debtors and the California Department of Water Resources (Dkt. No. 11999) granting the DWR Motion and denying the Debtors' Motion by orders at Docket Nos. 12000 and 12001, respectively, and setting a further briefing schedule; and the Court having considered and denied the Notice of Appearance and Ex Parte Application for Order Authorizing City of Santa Clara, dba Silicon Valley Power and Northern California Power Agency to Intervene and File a Response to California Department of Water Resources' Motion for Order Determining that The Castle Rock Agreement with PG&E Cannot be Assumed and that The Department of Water Resources' Claim No. 78104 be Paid (Dkt. 12024 and 12054); and the Court having considered the further briefing by the Debtors (Dkt. No. 12076) and DWR (Dkt. Nos. 12129 and 12129-1); and the Court having issued its Tentative Ruling Re Dispute Between Debtors and the California Department of Water Resources ("Tentative Ruling") (Dkt. No. 12147); and the Court having held hearings on March 2, 2022, and April 13, 2022, to consider the arguments and objections of the parties; and this Court, for the reasons stated by this Court on the record at the hearings, having determined that the ruling in the Court's Tentative Ruling should become the final ruling, and after due deliberation and sufficient good cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The issue of DWR's liability for removal costs under the Castle Rock Agreement was properly before the Court based on the DWR Motion, the Debtors' Motion and the other pleadings and argument made to the Court in these proceedings;
2. There are no material facts in dispute;

¹ Capitalized terms used but not otherwise herein defined shall have the meanings ascribed to such terms in the DWR Motion.

3. DWR's interpretation of the applicable sections of the Castle Rock Agreement is correct;

4. DWR does not owe any estimated future removal costs or anything else to Debtors and the remaining cotenants (City of Santa Clara dba Silicon Valley Power and Northern California Power Agency) under the Castle Rock Agreement; and


5. There are no damages to be assessed, by this Court or by arbitration, under that agreement.

IT IS HEREBY FURTHER ORDERED that, except as to the rulings made herein, the Court is not making any ruling as to any dispute between DWR on the one hand, and the City of Santa Clara dba Silicon Valley Power and Northern California Power Agency on the other, under the Transmission Services Agreement between those parties, which issues shall be dealt with outside this Court.

IT IS HEREBY FURTHER ORDERED that the Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order. This Order shall be immediately effective and enforceable upon its entry.

APPROVED AS TO FORM

KELLER BENVENUTTI KIM LLP


Jane Kim, Attorneys for Debtors
and Reorganized Debtors

****END OF ORDER****

EXHIBIT B**(Memorandum Decision dated March 8, 2022)**

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Signed and Filed: March 8, 2022

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
- and -) Chapter 11
PACIFIC GAS AND ELECTRIC COMPANY,) Jointly Administered
Reorganized Debtors.)
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

**MEMORANDUM DECISION REGARDING DISPUTE BETWEEN DEBTORS AND THE
CALIFORNIA DEPARTMENT OF WATER RESOURCES**

On March 2, 2022, the court heard oral argument regarding
California Department of Water Resources' Motion for Order
Determining that The Castle Rock Agreement with PG&E Cannot be
Assumed and that The Department of Water Resources' Claim No.
78104 be Paid (the "DWR Motion") (Dkt. 11887) and the Motion of

-1-

1 the Reorganized Debtors for Entry of an Order Modifying Plan
2 Injunction and Compelling Arbitration of Claim of California
3 Department of Water Resources (the "Debtors' Motion") (Dkt.
4 11896), together with the accompanying memoranda, declarations
5 and other filings.

6 Having considered the matters fully, the court concludes
7 that the DWR Motion should be GRANTED and the Debtors' Motion
8 should be DENIED.

9 Long before these bankruptcy cases were filed, the dispute
10 between these opposing parties was identified and framed, and
11 either side could have initiated the arbitration procedures of
12 the 1984 Cotenancy Agreement ("Agreement"). Neither did. Even
13 after the petitions were filed on January 29, 2019, that
14 procedure was available, either by DWR, perhaps after first
15 seeking relief from stay, or by Debtors. Again, neither pursued
16 that procedure.

17 All that changed when the Debtors' Plan of Reorganization
18 (the "Plan") was negotiated, filed, considered and confirmed.
19 As pointed out by DWR, specific provisions were inserted into
20 the Plan and the Order Confirming the Plan (the "OCP") to deal
21 with and reserve for later resolution very numerous open issues
22 relating to executory contracts between Debtors and many
23 governmental agencies, including DWR.

24 Among the most relevant of them are:

25 34. Determination of Cure Disputes.

26 a. Pursuant to Section 8.2(c) of the Plan, **in the event**
27 **of an unresolved dispute regarding** (i) any Cure Amount,
28 (ii) the ability of the Reorganized Debtors or any
assignee to provide "adequate assurance of future
performance" (within the meaning of section 365 of the

1 Bankruptcy Code) under the executory contract or
2 unexpired lease to be assumed, or **(iii) any other matter**
3 **pertaining to assumption, assumption and assignment, or**
4 **the Cure Amounts required by section 365(b)(1) of the**
5 **Bankruptcy Code (each, a "Cure Dispute"), such Cure**
6 **Dispute shall be resolved by a Final Order of the Court,**
7 which may be entered after the Effective Date. (emphasis
8 added).

67. Governmental Performance Obligations.

9 d. Notwithstanding anything in this Confirmation Order,
10 the Plan, or the Plan Documents, the listing of a matter
11 as an "executory contract" or an "unexpired lease" in
12 the Debtors' schedules or Plan Documents (a "Potentially
13 Assumed Contract/Lease") is without prejudice to any
14 contention by any Governmental Unit that the matter is
15 not in fact an executory contract or unexpired lease as
16 set forth in section 365 of the Bankruptcy Code. With
17 respect to any Cure Amount for a Potentially Assumed
18 Contract/Lease for which the United States or any
19 department, agency, or instrumentality of the State of
20 California (collectively, the "Governmental Parties") is
21 listed as the Non-Debtor Counterparty, all parties
22 reserve all rights to dispute such Cure Amount. **If any**
23 **Governmental Party disputes (i) that any Potentially**
24 **Assumed Contract/Lease is in fact an executory contract**
25 **or unexpired lease** or (ii) any Cure Amount, such
26 Governmental Party shall have no later than ninety (90)
27 days after the Confirmation Date (or such later date as
28 may be mutually agreed upon between the applicable
Governmental Party and the Debtors or Reorganized
Debtors) to file and serve an objection setting forth
such dispute, and **any such dispute shall be resolved by**
the Bankruptcy Court. (Emphasis added).

DWR is adamant that after it gave its notice of termination
of its participation in the Agreement on June 30, 2018,
effective one year later, there was nothing left for it to do or
for Debtors to assume. All that remains is for Debtors to pay a
refund of \$101,026.75, now reflected in Proof of Claim No. 78104
that is presumptively allowed and has not been the subject of an
objection.

1 Debtors take a contrary view, reflected as early as when
2 the court was considering confirmation of the Plan. Debtors
3 filed their *Schedule of Executory Contracts and Unexpired Leases*
4 *to be Assumed Pursuant to the Plan and Proposed Cure Amounts*
5 attached to the Plan Supplement as Exhibit B ("Cure Notice")
6 (Dkt. 7037).

7 That lengthy schedule included the Agreement. Thus, even
8 to the present date, Debtors maintain that the Agreement was
9 subject to assumption because it was not rejected, and the
10 resolution of the remaining dispute that is the subject of the
11 present motions is part and parcel of the entire bundle of
12 rights and obligations of the parties that must be resolved
13 through arbitration.

14 Given the very specific attention given to matters that
15 plainly include the present dispute, the court is satisfied that
16 the Plan and the OCP reserving jurisdiction in this court to
17 resolve them prevail over those relied on by Debtors to require
18 the court to order arbitration.

19 In *In re Thorpe Insulation Co.*, 671 F.3d 1011 (9th Cir.
20 2012), the court established the principles that guide
21 bankruptcy courts in dealing with arbitration provisions versus
22 bankruptcy alternatives. Those principles convince this court
23 to exercise its discretion not to order arbitration at present.

24 *Thorpe* involved a very complex reorganization of an
25 asbestos mass torts case and the implementation of 11 U.S.C. §
26 524(g). It was a dispute of massive proportions and was
27 obviously quite critical to the outcome of the bankruptcy as a
28 whole.

1 In contrast, Debtors would not have been in bankruptcy at
2 all but for the tragic wildfires of 2015, 2017 and 2018, none of
3 which have anything to do with the present dispute. It is easy
4 to assume that had those fires not occurred, no bankruptcy court
5 would have been called upon to deal with the present dispute
6 with DWR.

7 The determination of whether the Agreement is an executory
8 contract that may be assumed, and if so under what circumstances
9 and leading to what consequences, is clearly a core matter for
10 determination unless the arbitration option is more appropriate.
11 The core question is not a dispositive factor, but one that
12 should be considered. *Thorpe* taught that "[i]n core proceedings,
13 by contrast, the bankruptcy court at least when it sees a
14 conflict with bankruptcy law, has discretion to deny enforcement
15 of an arbitration agreement." *Thorpe* 671 F.3d at 1021 (citations
16 omitted).

17 The Ninth Circuit agreed with other circuit courts that
18 permit bankruptcy court discretion to decline enforcement or
19 otherwise applicable arbitration provisions "only if arbitration
20 would conflict the underlying purposes of the Bankruptcy Code."
21 *Id.* (citations omitted). Had either party initiated arbitration
22 after DWR gave its notice of termination in 2018 but before the
23 bankruptcy, there is no doubt that such course would have to be
24 followed. Even if either party had sought to do so after
25 bankruptcy, but before consideration of the Plan, the same
26 result appears likely.

27 Regardless of what could have happened, Debtors chose to
28 reserve the disposition of this dispute as a post-Confirmation

1 matter as indicated above. While this court is not unmindful of
2 the tremendous complexity of the reorganization effort, and even
3 the complexities encountered apart from the wildfire problems,
4 Debtors still made an election of how best to proceed. They
5 could have excluded the Agreement from the list of matters to be
6 disposed of later but did not. Thus, the deferral of resolving
7 the issue through the plan mechanisms was a conscious choice.

8 *Thorpe* stated:

9 "Arbitration of a creditor's claim against a debtor, even
10 if conducted expeditiously, prevents the coordinated
11 resolution of debtor-creditor rights and can delay the
confirmation of a plan of reorganization."

12 *Id.* at 1023.

13 There was no delay in consideration of the Plan and its
14 subsequent confirmation and implementation. The court cannot
15 ignore that conscious choice of the Debtors to proceed under the
16 procedures and reservations they established and which DWR and
17 other governmental agencies responded by their reservation of
18 rights as noted.

19 Even though this issue is presented to the court nearly two
20 years after the Plan was confirmed, there is still a risk that
21 an outcome achieved via arbitration, at least on the issues of
22 whether the Agreement was to the reserved assumption provisions
23 of the Plan at all, and whether DWR could be required to pay
24 anything after it gave its notice of termination, would conflict
25 with those policies articulated by *Thorpe* and memorialized in
26 the Plan and the OCP.

27 Under the circumstances presented, and consistent with the
28 admonitions of *Thorpe*, the court prefers to exercise its

1 discretion and keep that dispute here. If the outcome is as DWR
2 hopes, the matter is over, subject only to the possibility of
3 appellate review. If the outcome favors Debtors, the question
4 of liquidation of the amount of damages to be paid by DWR may be
5 more appropriately determined through arbitration.

6 There are no material facts in dispute regarding whether
7 DWR should or should not be ordered to pay its share of the net
8 loss upon termination of the Agreement. DWR looks to Section
9 14.5 of the Agreement to insulate it from such a charge because
10 the other parties continued to operate under it. Debtors rely
11 on Section 14.7 to hold DWR responsible for its share for
12 termination in the future.

13 Collateral to that, and of relatively minor importance, is
14 whether Claim No. 78104 should be paid. So far Debtors have not
15 asserted any substantive objection to it, but maintain that if
16 they prevail on the termination issue that would represent
17 little more than a minor offset in DWR's favor.

18 It is now time to put this dispute to rest. Debtors have
19 until March 25, 2022, to file a memorandum, not to exceed twenty
20 pages and limited to this discrete issue described above, in
21 support of their position. DWR has until April 8, 2022, to file
22 a reply memorandum, not to exceed twenty pages and similarly
23 limited. After that the matter will stand submitted unless the
24 court decides to consider oral argument.

25 If the decision is that DWR prevails, then that should be
26 the end of it, subject only to Debtors paying Claim No. 78104.
27 If Debtors prevail on that discrete issue, the court will
28 revisit the question of the amount DWR's future liability upon

1 termination should be determined through arbitration or via a
2 damages trial in this court.

3 The court is concurrently issuing orders consistent with
4 this Memorandum Decision.

5 ****END OF MEMORANDUM DECISION****
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EXHIBIT C
(Order Granting CDWR Motion Dated March 8, 2022)



Signed and Filed: March 8, 2022

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
) Chapter 11
- and -) Jointly Administered
PACIFIC GAS AND ELECTRIC COMPANY,)
)
Reorganized Debtors.)
)
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)
)
)

**ORDER GRANTING CALIFORNIA DEPARTMENT OF WATER RESOURCES' MOTION
FOR ORDER DETERMINING THAT THE CASTLE ROCK AGREEMENT WITH PG&E
CANNOT BE ASSUMED AND CLAIM NO. 78104 BE PAID**

For the reasons stated in the Memorandum Decision Regarding
Dispute Between Debtors and The California Department of Water
Resources being issued concurrently, California Department of
Water Resources' Motion for Order Determining that The Castle

-1-

1 *Rock Agreement with PG&E Cannot be Assumed and that The*
2 *Department of Water Resources' Claim No. 78104 be Paid (Dkt.*
3 *11887) is GRANTED.*

4 ****END OF ORDER****

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EXHIBIT D
(Order Denying PG&E Motion Dated March 8, 2022)



Signed and Filed: March 8, 2022

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
- and -) Chapter 11
PACIFIC GAS AND ELECTRIC COMPANY,) Jointly Administered
Reorganized Debtors.)
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

**ORDER DENYING DEBTORS' MOTION FOR ENTRY OF AN ORDER MODIFYING
PLAN INJUNCTION AND COMPELLING ARBITRATION OF CLAIM OF
CALIFORNIA DEPARTMENT OF WATER RESOURCES**

For the reasons stated in the Memorandum Decision Regarding
Dispute Between Debtors and The California Department of Water
Resources being issued concurrently, the Motion of the
Reorganized Debtors for Entry of an Order Modifying Plan

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*Injunction and Compelling Arbitration of Claim of California
Department of Water Resources (Dkt. 11896) is DENIED.*

****END OF ORDER****

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EXHIBIT E
(Order Denying Motion to Intervene Entered March 22, 2022)



Signed and Filed: March 21, 2022

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
- and -) Chapter 11
PACIFIC GAS AND ELECTRIC COMPANY,) Jointly Administered
Reorganized Debtors.)
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

ORDER DENYING MOTION TO INTERVENE BY CITY OF SANTA CLARA, DBA
SILICON VALLEY POWER AND NORTHERN CALIFORNIA POWER AGENCY

On March 15, 2022, interested parties City of Santa Clara, dba Silicon Valley Power ("SVP") and Northern California Power Agency ("NCPA") filed a Notice of Appearance and Ex Parte Application for Order Authorizing City of Santa Clara, dba Silicon Valley Power and Northern California Power Agency to Intervene and File a Response to California Department of Water

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1 *Resources' Motion for Order Determining that the Castle Rock*
2 *Agreement Cannot Be Assumed and that the Department of Water*
3 *Resources Claim No. 78014 be Paid* (the "Intervention Motion")
4 (Dkt. 12024). On March 17, 2022 the California Department of
5 Water Resources' ("DWR") filed an Opposition to the Intervention
6 Motion (Dkt. 12035).

7 The Intervention Motion seeks to enter the fray of a
8 longstanding and nearly adjudicated dispute by filing a brief
9 according to the schedule set by the court's *Memorandum Decision*
10 *Regarding Dispute Between Debtors and the California Department*
11 *of Water Resources* (Dkt. 11999) (the "Memo"). The Memo detailed
12 the court's decision to grant DWR's *Motion for Order Determining*
13 *that the Castle Rock Agreement with PG&E Cannot be Assumed and*
14 *Claim No. 78104 be Paid* ("DWR Motion") (Dkt. 11887) and
15 subsequently set a further briefing schedule for DWR and
16 Debtors. SVP and NCPA were both served notice of the DWR Motion
17 when it was first filed on February 1, 2022. The Intervention
18 Motion makes clear that SVP and NCPA conferred with Debtors and
19 deliberately chose not to respond to the substance of the DWR
20 Motion in the belief that Debtors would prevail in their *Motion*
21 *of the Reorganized Debtors for Entry of an Order Modifying Plan*
22 *Injunction and Compelling Arbitration of Claim of California*
23 *Department of Water Resources* (Dkt. 11896), which the court
24 denied.

25 In the related dispute between Debtors and DWR, DWR
26 acknowledged the existence of an agreement among it, SVP and
27 NCPA (but not Debtors) known as the Layoff Agreement.
28 Responding to the *Reorganized Debtors' Motion for Order*

1 *Modifying Plan Injunction and Compelling Arbitration* (Dkt.
2 11896), DWR stated:

3
4 Whether DWR effectively terminated its interest in
5 the Castle Rock Agreement is a separate issue that
6 can be determined without reference to the Layoff
7 Agreement. To the extent that NCPA and SVP believe
8 they may have any cognizable action against DWR,
9 they should pursue it in state court rather than
10 attempt to manipulate the bankruptcy court
11 proceeding to seek relief through the Executory
12 Contract and Cure Dispute and claims allowance
13 process. (Dkt. 11942 at 14).

14 In determining whether a motion to intervene is timely,
15 courts consider three factors: "(1) the stage of the
16 proceedings; (2) whether the parties would be prejudiced; and
17 (3) the reason for any delay in moving to intervene." *Nw. Forest*
18 *Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996), *as*
19 *amended on denial of reh'g* (May 30, 1996). As noted above, SVP
20 and NCPA chose not to participate in the DWR Motion for the past
21 month and a half while DWR made clear its interest in
22 determining the merits of the DWR Motion as to the Debtors from
23 the beginning. They remained on the sideline, casting their
24 fate with the Reorganized Debtors. To allow them to have a
25 second chance now would not be fair to DWR.

26 The proceedings are nearly over, DWR would be prejudiced in
27 having previously defaulted parties enter the fray, and the
28 reason for the delay is entirely the choice of SVP and NCPA.
All three factors weigh in favor of denying the Intervention
Motion. Even without intervention, DWR, SVP, and NCPA will

1 still be able to determine remaining rights under the Layoff
2 Agreement in another forum.

3 Accordingly, the Intervention Motion is DENIED.

4 **END OF ORDER**
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COURT SERVICE LIST

ECF Recipients

CERTIFICATE OF SERVICE

I am employed in the County of Sacramento; my business address is 555 Capitol Mall, Suite 1500, Sacramento, California 95814. I am over the age of eighteen years and not a party to the foregoing action.

On May 5, 2022, I served the within:

**(1) NOTICE OF APPEAL AND STATEMENT OF ELECTION TO HAVE APPEAL
HEARD BY UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA**

☒

(by mail) on all parties in said action by regular, first class United States mail, postage fully pre-paid, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Boutin Jones Inc., mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

See attached list of parties served by first class mail.

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TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):
Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 5/5/2022, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed on May 5, 2022, at Sacramento, California.

/s/ Carmelia V. Domingo
CARMELIA V. DOMINGO

1239852.1

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In Re: PG& E Corporation
and Pacific Gas and Electric Company

Bankruptcy Case No. 19-30088-DM
Chapter 11

COURT CERTIFICATE OF MAILING

I, the undersigned, a regularly appointed clerk of the United States Bankruptcy Court for the Northern District of California, served a copy of the foregoing document(s):

Notice of Appeal and Statement of Election- by Creditor City of Santa Clara dba Silicon Valley Power, Northern California Power Agency - Dkt. #12310

Memorandum Decision Regarding Dispute Between Debtors and the California Department of Water Resources- Dkt. #11999

Order Granting California Department of Water Resources' Motion For Order Determining That The Castle Rock Agreement With PG&E Cannot Be Assumed And Claim No. 78104 Be Paid- Dkt. #12000

Order Denying Debtors' Motion For Entry Of An Order Modifying Plan Injunction And Compelling Arbitration Of Claim Of California Department Of Water Resources- Dkt. #12001

Order Denying Motion to Intervene by City of Santa Clara, DBA Silicon Valley Power and Northern California Power Agency- Dkt. #12054

Order Regarding Dispute Between Debtors and California Department of Water Resources- Dkt. #12207

That I, in the performance of my duties as such Clerk, served a copy of the foregoing document(s) on the date shown below:

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Da'Wana L. Chambers
Deputy Clerk

Date: May 6, 2022

1 UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

| | |
|----------------------------|------------------------|
| 5 In re: | Bankruptcy Case |
| 6 PG&E CORPORATION, | No. 19-30088 (DM) |
| 7 - and - | |
| 8 PACIFIC GAS AND ELECTRIC | Chapter 11 |
| 9 COMPANY, | (Lead Case) |
| 10 Reorganized Debtors. | (Jointly Administered) |

11
12 **CERTIFICATE OF SERVICE**

13 I, Sonia Akter, do declare and state as follows:

14 1. I am employed by Kroll Restructuring Administration LLC (“*Kroll*”)¹, the claims and
15 noticing agent for the Reorganized Debtors in the above-referenced chapter 11 bankruptcy cases.

16 2. On May 6, 2022, at my direction and under my supervision, employees of Kroll caused
17 the following document to be served via first class mail on the Notice Parties Service List attached
18 hereto as **Exhibit A**:

- 19 • Notice of Appeal and Statement of Election to Have Appeal Heard by United States District
20 Court for the Northern District of California [Docket No. 12310]

21 3. I have reviewed the Notices of Electronic Filing for the above-listed document, and I
22 understand that parties listed in each NEF as having received notice through electronic mail were
23 electronically served with that document through the Court’s Electronic Case Filing system.

24 4. I declare under penalty of perjury under the laws of the United States of America, that
25 the foregoing is true and correct and that if called upon as a witness, I could and would competently
26 testify thereto.

27
28
¹ On March 29, 2022, Prime Clerk LLC changed its name to Kroll Restructuring Administration LLC.

1 Executed this 11th day of May 2022, at New York, NY.

2 */s/ Sonia Akter*

3 _____
Sonia Akter

Exhibit A

Exhibit A
Notice Parties Service List
Served via first class mail

| NAME | ADDRESS 1 | ADDRESS 2 | CITY | STATE | POSTAL CODE |
|---|---|--|---------------|-------|-------------|
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| California Department of Water Resources | Attn: Robert Bonta, Danette Valdez, Annadel Almendras | 455 Golden Gate Ave., Suite 11000 | San Francisco | CA | 4102-7004 |
| Duncan, Weinberg, Genzer and Pembroke, P.C. | Attn: Lisa S. Gast | 1667 K Street NW, Suite 700 | Washington | DC | 20006 |
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